No. 2378

United States

Circuit Court of Appeals

For the Ninth Circuit.

HENRY M. WHITE, Commissioner of Immigration at Seattle, Washington, for the United States Government,

Appellant,

vs.

K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEALIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIMOFF,

Appellees.

In the Matter of the Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIMOFF, for a Writ of Habeas Corpus.

Transcript of Record.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

FILMER BROS. CO. PRINT, 330 JACKSON ST., S. F., CAL.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

Index. Page

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2646.

In the Matter of Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIOFF, for a Writ of Habeas Corpus.

HENRY M. WHITE,

Respondent and Appellant.

K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIOFF,

Petitioners and Appellees.

Names and Addresses of Counsel.

CLAY ALLEN, Esq., United States Attorney, Attorney for Respondent and Appellant, Room 310 Federal Building, Seattle, Washington.

GEORGE P. FISHBURNE, Esq., Assistant United States Attorney, Attorney for Respondent and Appellant, Room 310 Federal Building, Seattle, Washington.

JOHN R. PARKER, Esq., Attorney for Petitioners and Appellees, Room 221 Lyon Building, Seattle, Washington.

JACOB KALINA, Esq., Attorney for Petitioners and Appellees, Room 221 Lyon Building, Seattle, Washington. [1*]

*Page number appearing at foot of page of original certified Record.

FOURTH: That all your petitioners were born in Russia, that they have left Russia with their own free will, and not by any reason that they have committed any offense against the laws of Russia and that they are coming here in hopes of bettering their conditions under the beneficient laws of the U. S.

FIFTH: That they have paid their transportation to the U. S. with their own money. [3]

SIXTH: That your petitioners are not held by said Immigration Commissioner upon any final process issued by a Court of common jurisdiction, nor held upon any process, or order for any contempt of any court, officer, or body having authority to commit or hold them, nor upon any warrant issued by any court of this State, upon indictment, or information in this State, nor is there any lawful or valid reason for detention of your petitioners.

SEVENTH: Your petitioners are held by the said Immigration Commissioner upon the alleged grounds as follows, to wit:

FIRST: That there are many Russians in the city of Seattle out of work.

SECOND: That they might become a public burden, but your petitioners aver that they are able to secure and save harmless the U. S. from any damage of any kind or nature whatsoever, arising from inability of your petitioners to support and take care of themselves and that they are amply able and willing and intend to be good and self-supporting residents of the U. S.

WHEREFORE, your petitioners pray—

FIRST: A writ of habeas corpus issue out of this

court directed to H. M. White, the said Immigration Commissioner in whose custody your petitioners now are, commanding and requiring said H. M. White to have the bodies of your petitioners before this court on some special and convenient day to be determined by this Court, then and there to show cause why these petitioners are detained of their liberties, and why they should not be forthwith and immediately discharged from said custody.

SECOND: That the pending of return of this writ at the date so to be fixed by this Court to assure their appearance at the said return day. [4]

THIRD: That your petitioner be discharged from said custody; that they have such other and further relief as this Court may seem just.

(One name cannot read)
K. GREGORY.
M. ALOSHIN.
I. RIABOFF.
P. NEANLIN.
I. EMELIN.
L. ORLOFF.
G. YAKIMOFF.
P. YAKIOFF.

Subscribed and sworn to before me this 12th day of January, 1914.

[Seal] JACOB KALINA,
Notary Public in and for the State of Washington,
Residing at Seattle.

Indorsed: Petition of Gregory et al. for Habeas Corpus. Filed in the U. S. District Court, Western

Dist. of Washington, Northern Division. Jan. 12, 1914. Frank L. Crosby, Clerk. By ————, Deputy. [5]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2646.

Petition for Writ of Habeas Corpus of K. GREGORY et al.,

Petitioners.

Appearance [of Attorneys for Petitioners].

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for petitioners in the above-entitled cause, and service of all subsequent papers, except writs and process, may be made upon said petitioners by leaving the same with,

PARKER & KALINA,
Office Address, 221 Lyon Bldg.,
Seattle, Washington.

[Indorsed]: Appearance. Filed in the United States District Court, Western District of Washington, Jan. 12, 1914. Frank L. Crosby, Clerk. By ————, Deputy. [6]

[Order Directing Issuance of Writ of Habeas Corpus.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2646.

In the Matter of the Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, C. YAKIMOFF and P. YAKIMOFF, for Writ of Habeas Corpus.

This cause coming on to be heard upon the application for a writ of habeas corpus, and the Court being well and sufficiently advised in the premises, it is ordered that a writ of habeas corpus issue by the Clerk of said court as prayed for in said application, returnable on the 17th day of January, at the hour of ten o'clock on said day, before the undersigned Judge of said Court, at its court-room usually occupied by him.

Dated this 12th day of January, 1914.

JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District *Court, Western District* of Washington, Jan. 12, 1914. Frank L. Crosby, Clerk. By ————, Deputy. [7]

[Writ of Habeas Corpus.]

United States District Court, Western District of Washington.

The President of the United States of America, to H. M. WHITE, Commissioner of Immigration, Greeting:

We command you, that you have the bodies of K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, C. Yakimoff and P. Yakimoff; by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff shall be called or charged, before the Hon. Jeremiah Neterer, United States District Judge for the Western District of Washington, at Seattle, Washington, in the Northern Division of said Western District of Washington, on the 17th day of January, 1914, A. D., at ten o'clock in the forenoon, to do and receive what shall then and there be considered concerning the said K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I Emelin, L. Orloff, G. Yakimoff and P. Yakimoff.

And have you then and there this writ.

WITNESS the Hon. JEREMIAH NETERER, Judge of the United States District Court for the Western District of Washington, this 12th day of

January, in the year of our Lord one thousand nine hundred and fourteen.

[Seal] FRANK L. CROSBY,
Clerk.
By Ed M. Lakin,
Deputy Clerk.

J. KALINA, Esq.,
Attorney for Petitioner. [8]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed writ of habeas corpus on the therein named H. M. White, Commissioner of Immigration, by handing to and leaving a true and correct copy thereof with John H. Sargent, Acting Assistant Commissioner of Immigration personally, at Seattle, in said District on the 12th day of January, A. D. 1914.

JOHN M. BOYLE,
U. S. Marshal.
By Wm. D. Downey,
Deputy.

Marshal's fees: $2.18.

[Indorsed]: Habeas Corpus. Filed in the U. S. District Court, Western District of Washington, Northern Division, Jan. 13, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [9]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2646.

In the Matter of the Petition of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF, and P. YAKIOFF, Aliens, for a Writ of Habeas Corpus.

Return to Petition and Writ of Habeas Corpus.

To the Honorable Judge JEREMIAH NETERER, Judge of the Above-entitled Court:

Comes now Henry M. White, Commissioner of Immigration, at Seattle, and for answer to the writ of *habeas corpus* issued herein, and for answer to the petition filed herein, for said writ, states as follows:

I.

That he denies each and every allegation set forth in the petition for said writ, save and except what is hereinafter specially admitted.

II.

That he admits the allegations set forth in the first paragraph of the petition ending at the words "Commissioner of Immigration."

III.

As to allegations set forth in the second paragraph, he admits those ending at "twenty years of age," in line eleven.

As to the rest of the allegations in said paragraph, he [10] has not knowledge and information there-

of sufficient to form a belief and therefore denies the same.

IV.

As to the allegations set forth in the third paragraph, he admits those ending at the words "free will," in line eighteen; and as to the other allegations set forth in said paragraph, he has not knowledge and information thereof sufficient to form a belief and therefore denies the same.

V.

As to the allegations set forth in the fourth paragraph, he admits those ending at the word "Russia" in line twenty-three; and as to the matter set forth in line twenty-four of said paragraph, he has not knowledge and information thereof sufficient to form a belief and therefore denies the same.

VI.

As to the allegations set forth in the fifth paragraph, he has not knowledge and information thereof sufficient to form a belief and therefore denies the same.

VII.

As to the allegations set forth in the sixth paragraph, he admits that the petitions are not held upon process issued by a United States or State Court; alleges that there is a valid and lawful reason for the detention of your petitioners, as hereinafter appears by the affirmative matter set forth in the separate answer.

VIII.

As to the allegations set forth in the seventh paragraph, he denies each and every allegation thereof,

save and except what may be admitted by the matter set forth in the separate answer hereinafter appearing. [11]

AND FOR A FURTHER AND SEPARATE ANSWER AND RETURN TO SAID APPLICATION FOR A WRIT OF HABEAS CORPUS, AND FOR FURTHER RETURN TO SAID WRIT, SAID HENRY M. WHITE ALLEGES AS FOLLOWS:

I.

That the above-named petitioners are aliens and are Russians, and arrived on December 19, 1913, or a few days prior thereto, on the steamship "Tamba Maru," at the port of Seattle, King County, Washington, and made application for admission to the United States.

II.

That according to the law, they were held for special inquiry by the Immigrant Inspector, and a Board of Special Inquiry, consisting of T. W. Lynch, J. E. Wilkes, and A. T. White, was appointed in the manner provided by Section 25 of the immigration act of February 20, 1907, and duly convened and met in the manner provided by law, on December 23, 1913.

III.

That on December 23, 1913, after a full hearing (a duplicate report of which appears in the Immigration files of this cause and is marked Exhibit "A" and made a part of this Return), the Board decided to reject the aliens on the ground that they were persons who were likely to become a public charge, for the following reasons:

FIRST: Because they are common or farm laborers and there is not work for them in the United States.

SECOND: Because they have but a limited amount of money, insufficient to maintain them [12] during the winter.

THIRD: Because there are 800 to 1,000 Russians unemployed in Seattle, and thousands of other nationalities in the same condition, and reports from the Interior are to the effect that the supply of common labor is far in excess of demand.

FOURTH: That any addition to the unemployed should be guarded against, and alien laborers should not be permitted to enter the United States at this time.

For a fuller statement of the reasons for the exclusion of these aliens and their subsequent detention on this account until they are returned to their native country, we refer to the findings of the Board of Special Inquiry, set forth in full on the last pages of Exhibit "A," referred to above.

IV.

That the above petitioners and aliens appealed to the Secretary of Commerce and Labor, and the said Secretary affirmed the decision of the Board of Special Inquiry by a decision rendered solely upon the evidence adduced before the said Board. That the decision was adverse to the admission of the said petitioners and aliens and his action, and that of the Board, as above set forth, are correct and final on this subject.

Wherefore, said Henry M. White prays the above-entitled Court that the said writ be dismissed and the application and petition therefor be denied. [13]

The United States of America,
Northern Division,
Western District of Washington,—ss.

Henry M. White, being first duly sworn, upon his oath deposes and says: That he is the party named in the foregoing answer; that he has read the same, knows the contents thereof and verily believes the same to be true.

HENRY M. WHITE.

Subscribed and sworn to before me this 16th day of January, 1914.

[Seal] ED M. LAKIN,
Deputy Clerk, U. S. Dist. Court, Western Dist. of Washington. [14]

[Exhibit "A" to Return to Petition and Writ of Habeas Corpus.]

U. S. DEPARTMENT OF LABOR.
Bureau of Immigration.

53618/42 Washington.
Exhibit A. January 10, 1914.

Immigration Service,
Seattle, Wash.

*Dedicant Jakob Orloff and two companions and Gregori Kornilin and five companions.

LARNED.

_____,

Attest:
CTH. Acting Commissioner-General.

*Secretary (or Acting Secretary) has affirmed excluding decision board and directs deportation.

U. S. Immigration Service.
Received Jan. 14, 1914, Seattle, Wash.
(Two time clocks.)

* * * * * * * * *

The above is an official copy of telegram sent this day.

F. LARNED,
Acting Commissioner General.

Meaning of Code Word Dedicant.

JOHN H. SARGENT,
Actg. Commissioner. [15]

TELEGRAPH COMPANY.
Clarence H. Mackay, President.

TELEGRAM.

Received at Main Office Delivery No. 71.
Postal Telegraph Building
723 First Ave., Cor. Columbia,
Seattle, Wash.
Tel. Main 2043; Elliott 1405.

The Postal Telegraph Cable Company (Incorporated) transmits and delivers this message subject to the terms and conditions printed on the back of this blank.

Design Patent No. 40529.

U. S. Immigration Service.
Received, Jan. ——, 1914. (Two time clocks.)
Seattle, Wash.
76 sfx 17 Govt.
Br Washington D C. Jan 10 1914
Immigration Service,
Seattle, Wn.

Dedicant jakob orloff and two companions and Gregori Kornilin and five companions.

LARNED.

This message phoned at 9:35 to S EP 932 am [16]

Postal.

Immigration, Washington, D. C.

December 27, 1913.

Appeal record nine Russians mailed Bureau twenty-third. Renvoy. Friends and relatives filed affidavits agreeing care for until get work and not permit become public charges. Affiants laboring men with from one to three hundred dollars.

WHITE.

Attest:

(Signed) HENRY M. WHITE,

Commissioner.

PHONED.

(Signed) HENRY M. WHITE.

Exact copy as signed by Henry M. White.

Mailed Dec. 27, 1913, by F. J. A. [17]

No. 4223/22. December 23, 1913.

Commissioner-General of Immigration,

Washington, D. C.

I have the honor to transmit herewith for consideration the record on appeal in the cases of Gregori Kornilin, Noisei Alioshin, Ivan Riaboff, Jakob Ephimoff, Peter Neonilin and Ivan Emelin, ex SS. "Tamba Maru" December 19, 1913, who have been excluded by a Board of Special Inquiry as persons likely to become public charges.

The circumstances under which they arrived and

the reasons for rejection are fully set out in the finding of the Board, in which I concur. These cases should be considered in connection with the cases of three other aliens ex same vessel same date, which are also being forwarded by this mail.

These aliens have sufficient funds to enable them to return from Yokohama to their homes in Russia and I recommend that the appeals be dismissed and that they be ordered returned to Japan at the expense of the importing vessel.

Sailings December 30th and fortnightly thereafter.

(Signed) JOHN H. SARGENT,
Act. Commissioner.

Exact copy as signed by John H. Sargent.
TWL/S.
Mailed Dec. 23, 1913, by F. J. A.
(Icnl.) Red Slip. Sec. 4223/23. [18]

Case No.
Gregori Kornilin,
Moisei Alioshin,
Ivan Riaboff,
Jakob Ephimoff,
Peter Neonilin, EXHIBIT A.
Ivan Emelin.

S. S. "Tamba Maru,"
December 19, 1913.
Excluded 12–22–13.
L. P. C.
6————6 [19]

[Report of Board of Special Inquiry.]

UNITED STATES DEPARTMENT OF LABOR.
IMMIGRATION SERVICE.
Seattle, Washington, December 20, 1913.

In re Cases of GREGORI KORNILIN, MOISEI ALIOSHIN, IVAN RIABOFF, JAKOB EPHIMOFF, PETER NEONILIN, and IVAN EMELIN.

Ex SS. "TAMBA MARU," December 19, 1913.

At a Meeting of the Board of Special Inquiry, Convened Pursuant to the Instructions of the Commissioner, Composed of Inspectors T. W. Lynch (Chairman), J. E. Wilkes, and A. T. White.

Stenographer—Trent Doser.

Interpreter—Henry G. Gerome.

Held for Special Inquiry by Inspector A. T. WHITE as L. P. C.

[Testimony at Meeting of Board of Special Inquiry.]

[Testimony of Gregori Kornilin.]

Alien sworn, testified as follows: Name is Gregori Kornilin; Russia; Russian; male, aged 28 years; married; reads and writes; farm laborer; last permanent residence, Simbirsk, Krasnoie, Russia; nearest relative in Russia, father, Ivan, Kornilin, Simbirsk, Krasnoie, Russia; destined to Vancouver, Canada, but they would not let me land so I want to go to Portland, Oregon; has cousin, Pavel Semeionoff, care of Stancheff Brothers, 73 North Third Street, Portland, Oregon; ticket to Vancouver via Victoria; $65.00 in gold; paid own passage; never in the United States.

Q. Have you a passport?

A. Yes. (Presents passport dated November 24, 1913, issued at Valdivastok, Russia, permitting the bearer to leave Russia.)

Q. When did you leave your home in Russia?

A. On the 17th of October I left my village.

Q. Where did you start for?

A. I wanted to go to Canada.

Q. Did you buy a ticket direct to Canada from your home?

A. I bought my ticket in Japan.

Q. When you left your home in Russia did these eight other boys who are on this boat leave at the same time with you?

A. We all left together from the same village.

Q. All going to Canada? A. All to Canada.

Q. Why didn't you get your passport before you left home? (Interpreter explains that all passports are issued at Valdivastok and all applicants appear there for same.)

Q. Have you any relatives in Canada?

A. I have a second cousin.

Q. How did you happen to decide to go to Canada?

A. The reason I wanted to go to Canada was because we all received letters from Canada stating that they were doing well there and that we had better come over here too.

Q. Did you receive any letters from Portland?

A. Same thing.

Q. Did he say he was doing well too and asked you to come over?

A. He says [20] times are very good here and

said you can get work here easy.

Q. Why did you want to go to Canada instead of the United States?

A. We understood it was nearer and also that they did not request any money to be shown.

Q. Why did you not land in Canada?

A. We didn't know why; they would not let us.

Q. What did they tell you?

A. No more people are allowed to enter because there are too many out of work here.

Q. How long since you had a letter from your cousin in Portland?

A. I received a letter about the first of October.

Q. Have you that letter with you? A. No.

Q. That man in Portland is a real blood cousin, is he?

A. He is my cousin; my father and his father are brothers.

Q. Have you any work promised you in this country? A. He says you can get plenty of work.

Q. Did he say he had a position for you—a job?

A. No, he didn't say anything of that sort.

Q. Have you ever been in any charitable or penal institution? A. No.

Q. Do you believe in polygamy? A. No.

Q. Do you belong to any societies? A. No.

Q. Do you believe in organized government?

A. I believe in law.

Q. Do you believe that the form of government now existing in Russia is all right?

A. The form of government is all right but somehow we have not got enough land.

Q. Do you believe in killing the officers because they are government officers?

A. No, we could not do that.

Q. Do you believe in the teachings of the anarchists and annihilationists of Russia?

A. I do not know what anarchists are.

Q. Did you ever hear of people who are banded together and throw bombs and try to kill the officials of Russia?

A. I have not heard of it and I do not believe in it.

Q. What would you do if you were landed in this country.

A. I will get a rooming-house and then look for work.

Q. What kind of work do you think you could do?

A. I can do all the farm work.

Q. You are not familiar with farm work as it is done in this country, are you?

A. I have an idea that it is about the same.

Q. Have you ever applied for admission to the United States before? A. No.

Q. And the only kind of work you can do is farm labor?

A. No, besides farm labor I understand common labor too.

Q. What kind of work did you do in Russia other than ordinary farm labor?

A. I worked in the woods and I worked in the mines at spare times.

Q. What kind of mines? A. Coal mines.

Q. There is no one else in the United States you know except the man in Portland?

A. No. Oh, there is a lot of others, about twenty friends around Portland, but no relatives.

Q. You don't know their names or addresses?

A. They all work in the same place and they all live in the same place.

Q. (By Inspector WILKES.) Have you got anyone dependent upon you for support in Russia?

A. I have a wife and two children. They do not have to rely upon me for support; my father and brother could support them if I could not.

Q. What wages do you expect to earn in the United States?

A. I do not know, I think about a couple dollars a day. [21]

Q. Are both of your children in Russia?

A. Yes, sir.

Q. (By Inspector LYNCH.) Have you any property in Russia?

A. Yes, I have a house and nine acres of land. I can get about $800 for it.

Q. Your cousin in Portland, what is his business?

A. He works on a railroad in the woods.

Q. He has no property that you know of?

A. I don't know he only lives here a year.

The applicant is an ignorant peasant of average intelligence and of good physique.

[Testimony of Moisei Alioshin.]

MOISEI ALIOSHIN, sworn, testified as follows: Name is Moisei Alioshin; Russia, Russian; male, aged 38 years; married; reads and writes; farm laborer; last permanent residence, Simbrisk, Krasnoie, Russia; nearest relative in Russia, wife, Axinia,

residing at Simbirsk, Krasnoie, Russia; destined to Vancouver, Canada, but they would not let me land so I want to go to Portland, Oregon; has no relatives in U. S.; ticket, produces order for passage from Victoria to Vancouver; money, $46.00; paid own passage; never in the United States.

Q. Have you a passport?

A. Yes. (Presents passport dated November 24, 1913, issued at Valdivastok, Russia, permitting the bearer to leave Russia.)

Q. When did you leave your home in Krasnoie?

A. About the first of November, 1913.

Q. And you bought a ticket to where?

A. I bought my ticket from my village to Valdivastok and from there to Yokohama and from there to Vancouver.

Q. Could you not buy a ticket in your home village direct to your destination? A. No.

Q. Did you leave home with the other eight Russians who are now on this boat?

A. The whole bunch went together.

Q. Are any of them related to you? A. No.

Q. Why did you start for Vancouver rather than the United States?

A. Because I have a brother in Vancouver.

Q. He advised you to come?

A. Yes, he advised me.

Q. Did you ever have any letters from any friends in the United States?

A. Yes, from Portland letters saying please come you will be better off here than in the old country.

Q. Why did yon not land at Victoria?

A. I don't know why.

Q. They told you you could not land?

A. Yes, they told me so.

Q. Did they say you must go back to Russia or Japan?

A. They told me to go to Seattle. He only questioned one of us.

Q. Which one? A. Jakob Ephimoff.

Q. Have you any property in Russia?

A. I have a house and some land.

Q. How much land?

A. I have land enough for one soul, nine acres.

Q. Were you able to make a living off your nine acres?

A. No, it is not enough land. It is very hard to make a living.

Q. How many persons are dependent on you for support? A. Wife and two sons.

Q. How will they make a living while you are away?

A. I left them enough bread for a year and $100 in cash. [22]

Q. What would you do if you were landed?

A. I think I have enough money until I go to work. If not all I have to do is to send a telegram to my brother in Vancouver and he will send me money.

Q. What kind of work will you do?

A. I can work also in the woods and in gold mines.

Q. Do you believe in polygamy? A. No.

Q. Have you ever been an inmate of any penal or charitable institution? A. No.

Q. Are you not crippled or deformed in any way?

A. No.

Q. Do you believe in government by law?

A. Yes.

Q. Do you belong to any societies?

A. All I belong to is the village community.

Q. Do you believe in the teachings of anarchy?

A. I do not know what it means.

Q. Do you not know that in Russia there are certain persons banded together to overthrow the government and make attempts from time to time to overthrow the officers?

A. During the Japanese war there was all kinds of murders.

Q. Didn't you ever hear of the anarchists who throw bombs and try to kill Russian officials?

A. I live in a small village, and I never hear of it. We thought there was something like that in the cities.

The applicant is of good physique, of average intelligence, but apparently not very well informed.

[Testimony of Ivan Riaboff.]

IVAN RIABOFF, sworn, testified as follows: Name is Ivan Riaboff; Russia, Russian; male, aged 38 years; married; reads and writes, farm laborer; last permanent residence, Krasnoie, Simbirsk, Russia; nearest relative in Russia, wife Anna, Krasnoie, Simbirsk, Russia; destined to Vancouver, Canada, but they would not let me land so I want to go to Portland, Oregon; has brother in law, Stephen Philatoff, care of Stancheff Brothers, 73 North Third Street, Portland, Oregon; produces order for pas-

sage from Victoria to Vancouver; $50.00; paid own passage; never in the United States.

Q. Have you a passport?

A. Yes, presents a passport dated November 24, 1913, issued at Valdivastok, Russia, permitting the bearer to leave Russia.

Q. When did you leave your home village?

A. About 50 days ago.

Q. These other men left at the same time?

A. All together.

Q. All going to Vancouver? A. Yes.

Q. You bought a ticket to Valdivastok then to Yokohama and then to Vancouver? A. Yes, sir.

Q. Have you any relative in Vancouver or Canada?

A. Yes, sir. An uncle—mother's brother—in Vancouver.

Q. Any relative in the United States.

A. I have my wife's brother.

Q. Have you any property in Russia?

A. I have three acres of land and a house and some cattle.

Q. How many people dependent on you for support?

A. I have my wife, a 17 year old son and a 15 year old daughter.

Q. How will they make a living now that you have left them?

A. I left them plenty of corn that they could sell and realize a few hundred dollars besides corn for their own consumption. [23]

Q. What would you do if you were landed from

this boat? A. Any kind of labor I can get.

Q. Where would you go? A. Go to Portland.

Q. Do you believe in polygamy? A. I do not.

Q. Were you ever an inmate of any charitable or penal institution? A. No.

Q. Do you believe in organized government?

A. Yes, sir.

Q. Are you affiliated with any anarchistic associations? A. I do not understand what it is.

Q. Do you know that in Russia there are certain associations which are banded together for the purpose of killing government officials?

A. I have heard of that.

Q. You do not belong to any of them or do not believe in that practice? A. No.

Q. Are you in good health? A. Good health.

Q. Not crippled or deformed in any way?

A. No.

The applicant is of average intelligence but not very well informed. He is of good physique.

[Testimony of Jakob Ephimoff.]

JAKOB EPHIMOFF sworn, testified as follows: Name is Ivan Riaboff; Russia; Russian; male, aged 34 years; married; reads and writes; farm laborer; last permanent residence, Krasnoie, Simbirsk, Russia; nearest relative in Russia, wife Agaphia, Krasnoie, Simbirsk, Russia; destined to Vancouver, Canada, but they would not let me land so I want to go to Portland, Oregon; has cousin Alexei Kalimoff, care of Stancheff Brothers, 73 North Third Street, Portland, Oregon; has order for passage from Victoria to Vancouver; $52.20; paid own passage; never

in the United States.

Q. Have you a passport?

A. Yes. (Presents passport dated November 24, 1913, issued at Valdivastok, Russia, permitting the bearer to leave Russia.)

Q. Have you ever applied for admission to the United States before? A. No.

Q. You left your home village in Russia with these other eight Russians who are now detained?

A. I left with the rest of them.

Q. And you bought a ticket to Valdivastok, thence to Yokohama, thence to Vancouver, B. C.?

A. Yes, sir.

Q. Why were you going to Vancouver, B. C.?

A. I have a cousin there.

Q. Why did you attempt to go to Canada rather than the United States?

A. Well, my relatives wrote to me from Portland and Vancouver and we thought that that was the nearest and would be less expense.

Q. Why did you not land at Victoria?

A. They would not let me land.

Q. Why? A. I don't know why.

Q. What did they tell you?

A. Well, some officer told me that they didn't want any laborers there. There is no work here; go to Seattle.

Q. Did he tell you that you would have to go back to Russia? A. No.

Q. Well, did he tell you you could go to Canada from Seattle? A. No, he did not say so.

Q. Did you have an interpreter in Russian to talk?

A. There was a passenger who spoke Russian.

Q. What kind of work did you follow in Russia?

A. I worked on my land and also worked in the woods. [24]

Q. How much land have you?

A. Seven and a half acres.

Q. How much of a family have you dependent upon you for support?

A. I have a son 17 years old and a daughter 17 years old and a wife.

Q. Where did you get the money to come to this country?

A. Sold cattle and worked in the woods and sold some corn.

Q. You do not know how to do the kind of work you would be required to do in this country, do you?

A. I am not afraid of the work.

Q. What reason have you to believe that you could get work?

A. They wrote to us there is plenty of work here.

Q. When was that?

A. About two months ago.

Q. Who wrote you?

A. My cousin in Portland and my cousin in Vancouver.

Q. Did they say they had a job for you?

A. No, he said there was plenty of work you can get.

Q. Have you ever been an inmate of a penal or charitable institution? A. No.

Q. Do you believe in the teachings of the anarchists? A. No.

A. Just my neighbors, no relatives.

Q. Did you receive any letters from any of them?

A. From Portland?

Q. Yes.

A. Yes, I received a letter from Portland.

Q. What did those letters contain in the way of suggestions or information?

A. My cousin wrote to my father and told him that if I wanted to come I could get lots of work, and if he needs it I can give him a little money until he gets to work.

Q. You are not familiar with the means of work which are open to laborers in this country, are you?

A. I think according to the letters that the work is the same.

Q. Were you ever confined in a charitable or penal institution? A. No.

Q. Do you belong to any anarchistic societies?

A. No.

Q. You know what they are?

A. This is the first time I hear the word anarchist.

Q. You know what annihilationist means?

A. No.

Q. Do you know that in Russia there are certain people banded together who believe in the killing of government officials? A. Never heard of it.

Q. Your cousin in Portland is a common laborer?

A. Yes, sir.

Q. Have you any property in Russia?

A. I have a cow, a horse, a house and nine acres of land.

Q. How many people dependent upon you for sup-

port? A. Wife and five children.

Q. Where did you get the money to come to Canada—to buy your ticket?

A. I had my own money.

Q. Where did you get it?

A. I sold some cattle and grain.

The applicant is not very bright, not very well informed, apparently honest in his statements, and of good physique.

[Testimony of Ivan Emelin.]

IVAN EMELIN, sworn, testified as follows: Name is Ivan Emelin; Russia; Russian; male, aged 39 years; married; reads and writes; common laborer; last permanent residence, Krasnoie, Simbirsk, Russia; nearest relatives in [26] Russia, wife Alexei, Krasnoie, Simbirsk, Russia; destined to Vancouver, Canada, but they would not let me land so I want to go to Portland, Oregon; has third cousin, Engraph Lipatoff, care of Stancheff Brothers, 73 North Third Street, Portland, Oregon; has order for passage from Victoria to Vancouver; $46.00; borrowed money to pay passage; never in United States before.

Q. Have you a passport?

A. Yes. (Presents passport dated November 24, 1913, issued at Valdivastok, Russia.

Q. Have you ever applied for admission to the United States before? A. No.

Q. You were traveling with this party of nine and were refused landing at Victoria? A. Yes.

Q. Have you any property in Russia?

A. I have a house, a cow and nine acres of land.

Q. Family? A. I have a wife.

Q. No children? A. No.

Q. Do you believe in polygamy? A. No.

Q. Have you ever been an inmate of any charitable or penal institution? A. No.

Q. Do you believe in anarchy?

A. No, I don't know what it is.

Q. Do you not know that in Russia there are people banded together who believe in killing government officials because of their official character?

A. I have heard that somewhere those things occur.

Q. You do not believe in it? A. No.

Q. What would you do if landed from this boat?

A. I will go and look for work.

Q. Suppose you can't find work?

A. I ought to be able to get a job.

Q. Suppose there is no job?

A. We will wait two or three days. Anyhow we will be able to feed ourselves until spring.

Q. Do you know what living costs in this country?

A. Well, it would cost about $3.50 a week. We can also write to our friends. They will either write and send us money or come themselves.

Q. Are you familiar with the lines of work which a laborer has to do in this country?

A. I heard they are about the same.

Q. What kind of work did you do in Russia?

A. Worked on my land and as a laborer.

The applicant is of good physique, rather dull and ignorant, but apparently honest.

Cases Deferred.

[Certificate of Stenographer to Testimony.]

I hereby certify that the foregoing is a correct transcript of the testimony given in these cases.

TRENT DOSER,
Stenographer. [27]

UNITED STATES DEPARTMENT OF LABOR.
IMMIGRATION SERVICE.
Seattle, Washington, December 22, 1913.

In re Cases of GREGORI KORNILIN, MOISEI ALIOSHIN, IVAN RIABOFF, JAKOB EPHIMOFF, PETER NEONILIN, and IVAN EMELIN.

Ex SS. "TAMBA MARU," December 19, 1913.

HEARING RESUMED.

At a Meeting of the Board of Special Inquiry, Convened Pursuant to the Instructions of the Commissioner, composed of Inspectors T. W. Lynch (Chairman), J. E. Wilkes, and A. T. White.

Stenographer—Trent Doser.

Interpreter—Henry G. Gerome.

Findings [of Inspectors].

These aliens were ticketed to Canada and were refused a landing in that country by the Dominion Immigration Agent at Victoria, B. C. They did not take an appeal from his decision but after having been brought to this port on the same vessel by which they had arrived in Canada, applied for admission. The steamship company manifested them as from Japan to Seattle, and collected a deposit to cover

head tax but did not collect any additional passage money.

These aliens in my judgment are persons likely to become public charges and therefore inadmissible to the United States. They are common laborers or farm laborers and there is no work for them. They have but a limited amount of money, an amount insufficient to maintain them during the winter and it has not been shown that they have any relatives in this country upon whom they have a lawful claim for support or who are in a position to care for them even if disposed to do so. There are at this time from 800 to 1,000 Russians unemployed in this city and *there thousands* of other nationalities in the same condition. Reports from the interior are uniformly to the effect that the supply of common labor is far in excess of the demand. The City of Seattle is endeavoring to relieve the situation by giving married men a few days employment each week on public work, and according to the public press the same methods are in vogue at Portland, Oregon, the point to which these aliens are destined. Their admission under the circumstances would only increase the number of unemployed and would tend to make greater the burden which will have to be borne by the state and by charitable organizations [28] during the coming winter months. The care of those now destitute is a problem sufficiently great to tax the ingenuity and resources of the State and more fortunate public, and any additions to the army of unemployed should be guarded against by every possible means until such time as there is work for them to

do. Alien laborers should not be permitted to enter the United States.

Nine men constituted the party ticketed to Canada originally, although three of them contend that they were so routed through a misunderstanding. Canada refused them admission and that Government is therefore primarily responsible for any inconvenience or hardships which they may suffer if deported. I, therefore, move that these aliens be excluded as persons likely to become public charges and ordered deported to the country whence they came at the expense of the importing vessel.

Inspector WILKES.—I second the motion.

Inspector WHITE.—The aliens are unanimously excluded.

Kornilin, Alioshin, Riaboff, Ephimoff, Neonilin, and Emelin, you have been excluded by a Board of Special Inquiry, which finds that you are inadmissible to the United States for the reason that you are a person likely to become a public charge. From this decision you have the right to appeal to the Secretary of Labor at Washington, D. C. If you elect to appeal notice should be given promptly.

You have been ordered deported to the country whence you came and you are hereby advised that such deportation will be at the expense of the importing vessel.

You are further advised that you may communicate with friends, relatives, your Consul or representative, or attorney.

Seattle, Washington, December 23, 1913.

Statement by Gregori Kornilin Made Through Interpreter Henry Gerome.

It would work a hardship on me to be turned back, because I have sold a horse, a cow and have mortgaged my land. I came on the assurance of Paul Semenoff, a countryman and neighbor of mine, who said that there was plenty of good work in this country, and not only that but I know that he is sending for his wife to come here, which proves to me that he must be doing well because he has only been in this country a short while. I would respectfully beg to be left in this country. I hereby appeal to the Secretary of Labor at Washington, D. C., from the excluding decision of the Board. I do not want an attorney and I do not desire to submit any further argument or evidence. [29]

Statement by Moisei Alioshin Made Through Interpreter Henry Gerome.

I do not wish to be sent back for it will work a hardship upon me, as I have sold a horse, a cow and all my crop, consisting of a few acres, and was coming out to this country on the assurances of two of my relatives, one in Vancouver, B. C., and one at Portland, Oregon, that it is an easy matter to make a living in this country, and relatively speaking the wages in this country are better than at home, and I would be able to earn money to send for my family to come here. I hereby apply to the Secretary of Labor at Washington, D. C., from the excluding decision of the Board, and do not desire to

be represented by an attorney. I do not desire to submit any further argument or to submit any further evidence.

Statement by Ivan Riaboff Made Through Interpreter Henry Gerome.

I wish to be left in this country and not deported back for I have not sufficient money to travel about 6,000 miles to get to my home from Japan, and I have sold a horse, oats and rye in order to come to this country and left enough for my wife to live on. I came out on the assurance of my brother in law, Stephen Philatoff, who makes his home in Portland, and he assured me that there is plenty of work and good wages for an able-bodied man, and assured me that if it happens that in the winter time there is little work he will aid me until spring and he also said that he is going to send for his family, and after a matter of six months I would be able to send for mine. I hereby appeal on the record as it stands to the Secretary of Labor at Washington, D. C. I do not desire an attorney and do not desire to submit any further evidence or argument.

Statement by Jakob Ephimoff Made Through Interpreter Henry Gerome.

I wish to be left in this country in order to be able to make a living for myself and bring out my wife, as I have not only sold a cow and horse but have rented my land for 12 years for $100. My relative in Canada and here told me that I could make a living here and bring out my family, and for some reason the Canadian Immigration Department did not

let me in so I would respectfully beg to be left here, as I have another relative in Portland, Oregon. I hereby appeal to the Secretary of Labor, Washington, D. C., from the excluding decision of the Board. I do not desire to be represented by an attorney and I do not desire to submit any further evidence or argument.

Statement by Peter Neonilin Made Through Interpreter Henry Gerome.

It would work a hardship upon me to return home as I have a wife and five children there and I have received assurance from my relative in Portland, Oregon, that I would be able to make a living for them and also in Canada. Otherwise I would not have sold my horse and my cow [30] and some oats and rye, because I would have kept them for seed and the horse to work the land and the cow for milk for the children. I have not enough money to return home and if I had I would not be able to make a living there as there is no work in the winter. I desire to appeal to the Secretary of Labor at Washington, D. C., from the excluding decision of the Board, and I do not desire to be represented by an attorney. I do not desire to submit any further evidence or to make any further argument.

Statement by Ivan Emelin Made Through Interpreter Henry Gerome.

I would like to be left in this country for I have sold a horse and a cow at home and some of the crop and it will work a hardship upon me to return home for I have not sufficient money to get to the place I

would have to travel to to get home and it is winter and there is no work there. I have relatives and friends both in Canada and Portland, Oregon and according to their letters and information they are all making a living and I am sure they would help me out if I could not get anything to do during the winter. From Yokohama to Valdivastok the fare is, in American money, $5.15 and from Valdivastok to my home costs about $35.00 in American money. I wish to appeal from the excluding decision of the Board. I do not desire to submit any further evidence. We all came on the assurances of our friends and relatives in Canada and Portland, Oregon, and as they are all making a living we took their word and thought we could make a good living here. I have no further argument to make.

[Certificate of Stenographer to Transcript of Testimony.]

I hereby certify that the foregoing is a correct transcript of the testimony given in these cases.

TRENT DOSER,
Stenographer [31]

[Letter, Dated December 20, 1913, Acting Commissioner, Seattle, Wash., to Inspector at Vancouver, B. C.]

DEPARTMENT OF COMMERCE AND LABOR
IMMIGRATION SERVICE.

Office of the Commissioner,
Seattle, Wash., December 20, 1913.

No. 4311.

Inspector in Charge,
U. S. Immigration Service,
Vancouver, B. C.

There were nine Russians arrived on the SS. "Tamba Maru" on the 19th instant, to wit:

Kornilin Gregori,
Moisei Alioshin,
Ivan Riaboff,
Jakob Ephimoff,
Peter Neonilin,
Ivan Emelin,
Jakof Orloff,
Grigori Yakimoff,
Philip Yakimoff,

I understand from some of the officers of the vessel that these Russians applied for admission to Canada at Victoria but for some reason or other were not permitted to land. Kindly advise me if these aliens were rejected at that port and if so for what cause and exactly what action was taken. Were they ordered deported and if so to what country. These Russians applied here for admission to the United States. If they were ordered deported from

Victoria, would there be any objection on the part of the Canadian officers to their being landed in the United States or do they prefer that the order of deportation be carried out?

(Signed) JOHN H. SARGENT,
Acting Commissioner.

Exact copy as signed by John H. Sargent.
Mailed Dec. 20, 1913, by F. J. A.
JHS/D.

Indorsed: Return to Petition and Writ of Habeas Corpus. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 17, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. **[32]**

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2646.

In the Matter of the Petition of K. GREGORY et al. for a Writ of Habeas Corpus.

Order Granting Writ and Discharging Petitioners.

This matter having come on for hearing on the 17th day of January, 1914, on the petition for a writ of habeas corpus in the above-entitled matter, the petitioners appearing by Parker and Kalina, their attorneys, and the respondent appearing by Clay Allen, United States Attorney, and Geo. P. Fishburne, Assistant United States Attorney, and it appearing to the Court that the writ of habeas corpus

should be granted and the petitioners should be discharged;

It is hereby ordered that the said writ be, and the same is hereby granted, and all of said petitioners discharged, unless within *t*hen days an appeal is presented; and that pending the appeal from this final discharge; each of the above petitioners shall be enlarged upon recognizance, with surety, in the sum of Two hundred and fifty ($250.00) dollars, for their appearance to answer the Judgment of the Appellate Court.

Dated this 27th day of January, 1914.

JEREMIAH NETERER,
Judge.

[Indorsed]: Order Granting Writ and Discharging Petitioners. Filed in the United States District Court, Western Dist. of Washington, Northern Division, Feb. 2, 1914. Frank L. Crosby Clerk. By Ed. M. Lakin, Deputy. **[33]**

[Opinion.]

United States District Court, Western District of Washington, Northern Division.

No. 2646.

In the Matter of the Petition of K. GREGORY et al. for a Writ of Habeas Corpus.

Filed Jan. ———, 1914.

ON MOTION FOR DISCHARGE. MOTION GRANTED.

PARKER & KALINA, for Petitioners.

CLAY ALLEN, U. S. Attorney, G. F. FISHBURN, Asst. U. S. Atty., for Respondent.

NETERER, District Judge.

K. Gregory and seven others files a petition praying a writ of habeas corpus alleging that they are in good faith seeking admission into the United States to make the United States their permanent home; that they do not come within any of the classes prohibited admission. A show cause order was issued and the Commissioner of Immigration made return setting forth, in substance, that the petitioners sought admission and were held for special inquiry by the immigrant inspector and a board of special inquiry was organized as provided by law, and:

"That on December 23, 1913, after a full hearing (a duplicate report of which appears in the immigration files of this cause and is marked Exhibit "A" and made a part of this Return), the Board decided to reject the aliens on the ground

that they were persons who were likely to become a public charge, for the following reasons:

First: Because they are common or farm laborers and there is no work for them in the United States.

Second: Because they have but a limited amount of money, insufficient to maintain them during the winter.

Third: Because there are 800 to 1000 Russians unemployed in Seattle, and thousands of other nationalities in the same condition, and reports from the Interior are to the effect that the supply of common labor is far in excess of demand.

Fourth: That any addition to the unemployed should be guarded against, and alien laborers should not be permitted to enter the United States at this time."

That the petitioners appealed to the Secretary of Labor who affirmed the decision of the Board of Special Inquiry.

The petitioners move that they be forthwith discharged for the reasons:

"(1) That the return shows that they are detained and restrained of their liberty for unlawful reasons and contrary to the statutes in such cases made and provided; (2) that the Special Examining Board and the Secretary of Commerce and Labor and said Commissioner exceeded their authority and jurisdiction; (3) that the alleged reasons for detaining said petitioners are [34] irrelevant, immaterial and not supported by evidence, and are frivolous and sham; (4) that said

petitioners had all the personal qualifications required of them by the statutes and to entitle them to immediate and unconditional discharge."

This Court held In re Moola Singh, 207 Fed. 780, that the jurisdiction of this Court is limited to ascertaining whether the petitioners were denied a hearing, and if a hearing has been accorded, the Court is precluded from a re-examination of the issue presented merely because it is contended that the conclusion of the Immigration officers based upon the testimony was wrong. In the Moola Singh case a trial was had, and the conclusion of the examining board was that the aliens be excluded from admission under the laws of the United States. The conclusion of the board found delinquency in the personal qualifications of the applicants which brought them within the exclusion provisions of the act. This Court cannot examine into the testimony produced upon the hearing in this case before the special examining board, nor enter upon a re-examination of the facts. This Court is bound by the facts as found by the board of special inquiry. Do the facts as found bring the petitioners within the provisions of the exclusion provisions of the Act? Are the petitioners qualified to enter under the findings of the board, and is the Act of the board beyond its jurisdiction, and does the personal condition of the applicants, as found, preclude their exclusion?

Sec. 1 of the Immigration Act of February 20, 1907, reads:

"That there shall be levied, collected and paid a tax of four dollars for every alien entering the United States."

Sec. 2 of the Act provides who are to be excluded, among whom are "persons likely to become a public charge." Sec. 10 of the Act provides:

"That the decision of the board of special inquiry, hereinafter provided for, based upon the certificate of the examining medical officer, shall be final as to the rejection of aliens affected with tuberculosis or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under Section Two of this Act."

Sec. 24 of the Act provides: [35]

" . . . Immigration officers shall have power to administer oaths, and to take and consider evidence touching the right of any alien to enter the United States, and where such action is necessary to make a written record of such evidence."

A provision for the punishment of any persons who shall knowingly or willfully give false oaths or swear to any false statement is made, and it is also provided that the decision of such officer in admitting an alien shall be subject to challenge by any other officer, and such challenge shall operate to take the alien whose right to land is challenged before a board of special inquiry for its investigation. It is further provided:

"Every alien who may not appear to the examining immigrant inspector at the port of arrival to

be clearly and beyond doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry."

"Sec. 25. . . . All hearings before boards shall be separate and apart from the public . . . and the decision of any two of the board shall prevail; but either the alien or any dissenting member of said board may appeal . . . to the Secretary of Labor . . . that in every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration officers, if adverse to the admission of such alien shall be final, unless reversed on appeal to the Secretary of Labor."

Under Sec. 2, an alien "likely to become a public charge" is excluded; and under Sec. 25, the decision of the board of special inquiry is final where the alien is by law excluded. The findings and conclusions of the board with relation to the petitioners, however, eliminate all physical and mental deficiencies legislated against. Shall it be said, under such a record, that the examining board can exclude an alien upon the conclusion that he is "likely to become a public charge," when, upon the facts found and reasons given, the applicant is not brought within the provisions of the act excluding him from admission?

In the findings made there is no disqualification personal to the applicants, nor any objection made because of inability to conform to new conditions and relations. They are not excluded by the provisions

of the Act. The reasons given do not exclude them under the Act. These reasons are proper subjects for the consideration of Congress but they do not authorize the temporary suspension of the Immigration Act, which the adoption of these findings will do. The laws and principles upon which our Government **[36]** rests forbid the exercise of arbitrary power. Immigration officers must act within the powers given. Courts have power to intervene where they exceed their authority.

Ex parte Saraceno, 182 Fed. 955;
Lewis vs. Frick, 189 Fed. 146;
In re Feinkoff, 47 Fed. 447;
Ex parte Koerna, 176 Fed. 479;
In re O'Sullivan, 31 Fed. 447;
United States vs. Martin, 192 U. S. 1.

The petitioners are discharged; but, if within ten days after the filing of this decision, the respondent appeals, the petitioners must give recognizance with sufficient surety in the sum of $250.00 each, conditioned to appear and answer the judgment of the Appellate Court in accordance with Supreme Court Rule 34.

JEREMIAH NETERER.

[Indorsed]: Petition for Writ of Habeas Corpus. Writ Sustained. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 27, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. **[37]**

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2646.

In the Matter of Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIMOFF for a Writ of Habeas Corpus.

Petition for and Order Allowing Appeal.

PETITION FOR APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND ORDER ALLOWING SAME.

Henry M. White, Commissioner of Immigration, at Seattle, Washington for the United States Government the respondent in the above-entitled cause, by Clay Allen, United States Attorney for the Western District of Washington, and George P. Fishburne, Assistant United States Attorney for said District, feeling himself aggrieved by the order and judgment of discharge, dated January 27, 1914, and entered February 2, 1914, and the decision, filed January 27, 1914, does hereby appeal from said order and judgment of discharge and said decision to the United States Circuit Court of Appeals for the Ninth Circuit and prays that his appeal may be allowed, and that a transcript of the record and all proceedings and papers upon which said order and judgment

of discharge and decision were made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner respectfully prays that on account [38] thereof this appeal be allowed to correct the errors complained of, and to reverse, annul and set aside the said order and judgment, dated January 27, 1914, and entered in the premises on February 2, 1914, and the decision, filed January 27, 1914.

Your petitioner further says that he has this day filed herein his assignment of errors committed in the above-entitled proceeding, and intended to be urged by your petitioner as appellant upon the prosecution of this suit upon appeal.

Your petitioner further says that this appeal is prosecuted by and under the direction and authority of the Attorney General of the United States of America, on behalf of the United States of America, and respectfully prays that said appeal may be allowed without bond.

Dated at Seattle, Washington, this 4th day of February 1914.

CLAY ALLEN,
United States Attorney.
G. P. FISHBURNE,
Assistant United States Attorney.

[Order Allowing Appeal, etc.]

And now on this fourth day of February, 1914, it is ordered that the appeal prayed for in the foregoing petition be allowed as prayed for by said Henry M. White, Commissioner of Immigration at Seattle, Washington, for the United States Government.

And it is further ordered, that the said applicants, **[39]** K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff, each may be enlarged pending the said appeal, upon executing a recognizance, with surety, in the sum of Two Hundred and Fifty Dollars ($250.00), to the satisfaction of the Clerk of the above-entitled court, for his appearance to answer the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, and upon his failure to give bail, to remain in the custody of the Commissioner of Immigration at Seattle, Washington.

JEREMIAH NETERER,
United States District Judge, Presiding in said Western District of Washington.

[Indorsed]: Petition for and Order Allowing Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 4, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. **[40]**

In the District Court of the United States, for the Western District of Washington Northern Division.

No. 2646.

In the Matter of Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIMOFF for a Writ of Habeas Corpus.

Assignment of Errors.

Comes now Henry M. White, Commissioner of Im-

migration at Seattle, Washington, for the United States Government, the respondent and appellant in the above-entitled cause, by Clay Allen, United States Attorney for the Western District of Washington, and George P. Fishburne, Assistant United States Attorney for said District, and says that in the record and proceedings in this cause and in the order and judgment of discharge, dated the 27th day of January, 1914, and filed and entered in the Clerk's office February 2, 1914, and in the decision of the Court, made and filed the 27th day of January, 1914, there is manifest error in this, to wit:

I.

That the Court erred in issuing the writ of habeas corpus.

II.

That the Court erred in assuming jurisdiction of the case. [41]

III.

That the Court erred in holding that he had jurisdiction and power to discharge the petitioners, K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff, when the records showed they had previously had a hearing before the Immigration Board, which had rendered a decision excluding their admission and which decision was affirmed by the Secretary of Labor.

IV.

That the Court erred in finding that said petitioners were not "likely to become a public charge."

V.

That the Court erred in finding that he or any

court has a right to say what are the matters to be taken into consideration by the Immigration Board in determining what aliens are "likely to become a public charge."

VI.

That the Court erred in finding that the Immigration Board exceeded its authority in excluding the said petitioners on the ground that they are "likely to become a public charge," because it based its decision upon reasons not within the Act.

VII.

That the Court erred in setting aside the decision of the Immigration Board, affirmed by the Secretary of Labor, that the said petitioners were "likely to become a public charge."

VIII.

That the Court erred in holding that the Immigration Board exceeded its authority in its decision, affirmed by [42] the Secretary of Labor, that the said petitioners should be excluded because they were "likely to become a public charge."

IX.

That the Court erred in finding that the courts had power to intervene where the Immigration Board exceeded its authority, if the decision was already affirmed by the Secretary of Labor.

X.

That the Court erred in not finding that said petitioners had a hearing according to the Act, and that therefore the Immigration Board and the Secretary of Labor did not exceed their authority in holding that said petitioners should be excluded because they

were "likely to become a public charge."

XI.

That the Court erred in not holding that seeing and questioning the said petitioners by the Immigration Board was such taking of testimony as would exclude the courts from reviewing the decision of the Immigration Board, affirmed by the Secretary of Labor, holding that the said petitioners should be excluded on the ground they were "likely to become a public charge."

XII.

That the Court erred in finding that the Immigration Board excluded the said aliens as "likely to become a public charge" upon facts and reasons not within the Immigration Act.

XIII.

That the Court erred in finding that the Immigration Board excluded the said aliens on grounds not set forth in the Act. [43]

XV.

That the Court erred in rendering the decree discharging the said petitioners from the custody of the officers of the United States and restoring them to their liberty.

XVI.

That the Court erred in not holding that the decision of the Immigration Board, affirmed by the Secretary of Labor, that the said aliens were "likely to become a public charge," was a decision on a question of fact that could not be reviewed or reversed by the Court.

WHEREFORE, Henry M. White, Commissioner

of Immigration at Seattle, Washington, respondent and appellant herein, prays that his assignment of errors be entered upon the record in this cause, and that upon the hearing of this appeal it may be adjudged by the United States Circuit Court of Appeals for the Ninth Circuit that the order and judgment, dated January 27, 1914, and entered February 2, 1914, and the decision, made and filed January 27, 1914, be in all things reversed, set aside and held for naught, and that it be adjudged and decreed that the applicants, K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff, be remanded to the custody of the respondent herein to be further dealt with according to law.

Dated at Seattle, Wash., February 4, 1914.

CLAY ALLEN,
United States Attorney.
G. P. FISHBURNE,
Assistant United States Attorney. [44]

[Indorsed]: Assignment of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 4, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [45]

In the District Court of the United States, for the Western District of Washington Northern Division.

No. 2646.

In the Matter of Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIMOFF for a Writ of Habeas Corpus.

Citation [on Appeal (Copy)].

To K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff, and to John R. Parker and Jacob Kalina, Their Attorneys:

You, and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the United States District Court for the Western District of Washington, in a proceeding therein entitled "In the Matter of Application of K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff for a Writ of Habeas Corpus," numbered 2646, and show cause, if any there be, why the order and judgment and the decision of the United States District Court for the Western District of Washington, in said appeal mentioned, should not be reversed, set aside and held for naught, and why speedy justice should not be done in that behalf.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief [46] Justice of the United States, this Fourth day of February, 1914.

[Seal] JEREMIAH NETERER,

United States District Judge Presiding in said Western District of Washington.

Receipt of a copy and due and legal service of the

above Citation is hereby admitted this 4th day of February, 1914.

JOHN R. PARKER,
JACOB KALINA,
Attorneys for Petitioners.

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Citation on the therein-named John R. Parker and Jacob Kalina by handing to and leaving a true and correct copy thereof with John R. Parker, a member of the firm of John R. Parker and Jacob Kalina, personally at Seattle, in said District on the 4th day of February, A. D. 1914.

JOHN M. BOYLE,
U. S. Marshal.
By Geo. B. Devenpeck,
Deputy.

Marshal's fees: $2.00. [47]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Citation on the therein named John R. Parker by handing to and leaving a true and correct copy thereof with John R. Parker, personally at Seattle,

in said District, on the 4th day of February, A. D. 1914.

JOHN M. BOYLE,
U. S. Marshal.
By Geo. B. Devenpeck,
Deputy.

Marshal's fees: $2.12.

[Indorsed]: Citation. Filed in the U. S. District Court, Western District of Washington, Northern Division, Feb. 4, 1914. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy. [48]

United States District Court for the Western District of Washington.

No. 2646.

In the Matter of Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIMOFF for a Writ of Habeas Corpus.

Praecipe [for Transcript of Record].

To the Clerk of the Above-entitled Court:

You will please send up the following portions of the record in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit.

Petition for Writ of Habeas Corpus.

Appearance by the Attorneys.

Order to Show Cause why the Petitioners should not be discharged.

Writ of Habeas Corpus.

Return to the Petition and Writ of Habeas Corpus and Exhibit "A" thereto attached.

Order dated January 27, 1914, and filed February 2, 1914.

Decision filed January 27, 1914.

Petition and Order Allowing Appeal.

Citation and proofs of its service.

Assignment of Errors.

In brief, all papers filed Feb. 4, 1914.

CLAY ALLEN,
District Attorney.
G. P. FISHBURNE,
Assistant U. S. Dist. Attorney.

[Indorsed]: Praecipe. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 4, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [49]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2646.

In the Matter of the Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIOFF for a Writ of Habeas Corpus.

United States of America,
Western District of Washington.—ss.

I, Frank L. Crosby Clerk of the United States

District Court, for the Western District of Washington, do hereby certify the foregoing 49 typewritten pages, numbered from 1 to 49, inclusive, to be a full true, correct and complete copy of so much of the record papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing transcript of the record on appeal is the sum of Thirty-eight and 20/100 ($38.20) dollars, chargeable to the United **[50]** States, and that the said sum will be included in my account against the United States for Clerk's fees for the quarter ending March 31, 1914.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 10th day of February, A. D. 1914.

[Seal] FRANK L. CROSBY,
Clerk. **[51]**

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2646.

In the Matter of Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF and P. YAKIMOFF for a Writ of Habeas Corpus.

Citation [on Appeal (Original)].

To K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff, and to John R. Parker and Jacob Kalina, Their Attorneys:

You, and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, within thirty days from the date of this Citation, pursuant to an appeal filed in the clerk's office of the United States District Court for the Western District of Washington, in a proceeding therein entitled "In the Matter of Application of K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff for a Writ of Habeas Corpus," numbered 2646, and show cause, if any there be, why the order and judgment and the decision of the United States District Court for the Western District of Washington, in said appeal mentioned, should not be reversed, set aside and held

for naught, and why speedy justice should not be done in that behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief [52] Justice of the United States, this fourth day of February, 1914.

[Seal] JEREMIAH NETERER,
United States District Judge Presiding in said Western District of Washington.

Receipt of a copy and due and legal service of the above citation is hereby admitted this 4th day of February, 1914.

JOHN R. PARKER,
JACOB KALINA,
Attorneys for Petitioners. [53]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Citation on the therein named John R. Parker and Jacob Kalina, by handing to and leaving a true and correct copy thereof with John R. Parker, a member of the firm of John R. Parker and Jacob Kalina, personally, at Seattle, in said District, on the 4th day of February, A. D. 1914.

JOHN M. BOYLE,
U. S. Marshal.
By Geo. B. Devenpeck,
Deputy.

Marshal's fees: $2.00.

Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 4, 1914.

FRANK L. CROSBY,
Clerk.
By Ed M. Lakin.

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Citation on the therein named John R. Parker, by handing to and leaving a true and correct copy thereof with John R. Parker, personally, at Seattle, in said District, on the 4th day of February, A. D. 1914.

JOHN M. BOYLE,
U. S. Marshal.
By Geo. B. Devenpeck,
Deputy.

Marshal's fees: $2.12.

[Endorsed]: Original. No. 2646. In the District Court of the United States for the Western District of Washington, Northern Division. In the Matter of Application of K. Gregory et al. for a Writ of Habeas Corpus. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 4, 1914. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy. [54]

[Endorsed]: No. 2378. United States Circuit Court of Appeals for the Ninth Circuit. Henry M. White, Commissioner of Immigration at Seattle, Washington, for the United States Government, Appellant, vs. K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff, Appellees. In the Matter of the Application of K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff, and P Yakimoff for a Writ of Habeas Corpus. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Received and filed February 13, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

HENRY M. WHITE, Commissioner of Immigration at Seattle, Washington, for the UNITED STATES GOVERNMENT (Respondent), *Appellant,*

vs.

K. GREGORY, *et al.* (Petitioners), *Appellees.*

No._____

In the Matter of the Application of K. GREGORY, M. ALOSHIN, I. RIABOFF, P. NEANLIN, I. EMELIN, L. ORLOFF, G. YAKIMOFF, and P. YAKIMOFF, Aliens, for a WRIT OF HABEAS CORPUS.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

Brief of Appellant

FACTS AND ISSUE.

The issue in this action was on the return of the Commissioner of Immigration, and the motion of the

petitioners to be discharged, the relevant portions of which are in the following language:

That on December 23, 1913, after a full hearing, the board decided to reject the aliens on the ground that they were persons who were likely to become a public charge, for the following reasons:

First: Because they are common or farm laborers and there is no work for them in the United States.

Second: Because they have but a limited amount of money, insufficient to maintain them during the winter.

Third: Because there are 800 to 1,000 Russians unemployed in Seattle, and thousands of other nationalities in the same condition, and reports from the interior are to the effect that the supply of common labor is far in excess of demand.

Fourth: That any addition to the unemployed should be guarded against, and alien laborers should not be permitted to enter the United States at this time.

The petitioners moved that they should be forthwith discharged for the reasons:

(1) That the return shows that they are detained and restrained of their liberty for unlawful reasons and contrary to the statutes in such cases made and provided; (2) that the Special Examining Board and the Secretary of Commerce and Labor and said Commissioner exceeded their authority and jurisdiction; (3) that the alleged reasons for detaining said petitioners are irrelevant, immaterial and not supported by evidence, and are frivolous and sham; (4) that said petitioners had all the personal qualifications required of them by the statutes, and to entitle them to immediate and unconditional discharge.

ASSIGNMENT OF ERRORS.

The errors assigned by appellant are as follows:

I.

That the court erred in issuing the Writ of Habeas Corpus.

II.

That the court erred in assuming jurisdiction of the case.

III.

That the court erred in holding that he had

jurisdiction and power to discharge the petitioners, K. Gregory, M. Aloshin, I. Diaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff, when the records showed they had previously had a hearing before the Immigration Board, which had rendered a decision excluding their admission and which decision was affirmed by the Secretary of Labor.

IV.

That the court erred in finding that said petitioners were not "likely to become a public charge."

V.

That the court erred in finding that he or any court has a right to say what are the matters to be taken into consideration by the Immigration Board in determining what aliens are "likely to become a public charge."

VI.

That the court erred in finding that the Immigration Board exceeded its authority in excluding the said petitioners on the ground that they are "likely to become a public charge," because it based its decision upon reasons not within the act.

VII.

That the court erred in setting aside the decision of the Immigration Board, affirmed by the Secretary of Labor, that the said petitioners were "likely to become a public charge."

VIII.

That the court erred in holding that the Immigration Board exceeded its authority in its decision, affirmed by the Secretary of Labor, that the said petitioners should be excluded because they were "likely to become a public charge."

IX.

That the court erred in finding that the courts had power to intervene where the Immigration Board exceeded its authority, if the decision was already affirmed by the Secretary of Labor.

X.

That the court erred in not finding that said petitioners had a hearing according to the act, and that therefore the Immigration Board and the Secretary of Labor did not exceed their authority in holding that said petitioners should be excluded because they were "likely to become a public charge."

XI.

That the court erred in not holding that seeing and questioning the said petitioners by the Immigration Board was such taking of testimony as would exclude the courts from reviewing the decision of the Immigration Board, affirmed by the Secretary of Labor, holding that the said petitioners should be excluded on the ground that they were "likely to become a public charge."

XII.

That the court erred in finding that the Immigration Board excluded the said aliens as "likely to become a public ccharge" upon facts and reasons not within the Immigration Act.

XIII.

That the court erred in finding that the Immigration Board excluded the said aliens on grounds not set forth in the act.

XIV.

That the court erred in rendering the decree discharging the said petitioners from the custody of the officers of the United States and restoring them to their liberty.

XV.

That the court erred in not holding that the decision of the Immigration Board, affirmed by the Secretary of Labor, that the said aliens were "likely to become a public charge," was a decision on a question of fact that could not be reviewed or reversed by the court.

THE COURT'S DECISION.

The material part of the decision of the court, which very ably presents the most tenable position to be taken by the appellees, is as follows:

In the findings made there is no disqualification personal to the applicants, nor any objection made because of inability to conform to new conditions and relations. They are not excluded by the provisions of the act. The reasons given do not exclude them under the act. These reasons are proper subjects for the consideration of Congress, but they do not authorize the temporary suspension of the Immigration Act, which the adoption of these findings will do. The laws and principles upon which our government rests forbid the exercise of arbitrary power. Immigration officers must act within the

powers given. Courts have power to intervene where they exceed their authority.

Ex parte Saraceno, 182 Fed. 955.
Lewis vs. Frick, 189 Fed. 146.
In re Feinkoff, 47 Fed. 447.
Ex Parte Koerna, 176 Fed. 479.
In re O'Sullivan, 31 Fed. 448.
United States vs. Martin, 192 U. S. 1.

THE RULE LAID DOWN BY THE SUPREME COURT.

In our opinion some of the decisions of the Federal courts on this subject have not clearly distinguished and accepted the rule laid down by the Supreme Court of the United States.

In *Ekiu vs. United States,* 35 L. Ed. 1146, 1150 (139-142 U. S. Sup. Ct. Rep. 1146), the Act of 1891 was under consideration. Section 1 of that act was in substance the same as ours; it provided that all idiots, insane persons, paupers or persons likely to become a public charge, etc., should be excluded. Under Section 1 a woman was detained on the ground that she was liable to become a public charge and therefore prohibited from landing, and she went into court and had a writ of habeas corpus

issued, and in considering whether she was entitled to it, the court, at page 1150, says:

> "Section 7 of the Act of 1891 establishes the office of superintendent of immigration, and enacts that he 'shall be an officer in the Treasury Department, under the control and supervision of the Secretary of the Treasury.' By Sec. 8 'the proper inspection officers' are required to go on board any vessel bringing alien immigrants and to inspect and examine them, and may for this purpose remove and detain them on shore, without such removal being considered a landing; and 'shall have power to administer oaths, and to take and consider testimony touching the right of any such aliens to enter the United States, all of which shall be entered of record;' 'all decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury'."

And again the court says:

> "The decision of the inspector of immigration being in conformity with the Act of 1891, there can be no doubt that it was final and conclusive against the petitioner's right to land in the United States. The words of Section 8 are clear to that effect, and were manifestly intended to prevent the question of an alien immigrant's right to land, when once decided adversely by an inspector, acting within the juris-

diction conferred upon him, from being impeached or reviewed, in the courts or otherwise, save only by appeal to the inspector's official superiors, and in accordance with the provisions of the act. Section 13, by which the circuit courts and district courts of the United States are 'invested with full and concurrent jurisdiction of all causes, civil and criminal, arising under any of the provisions of this act,' evidently refers to causes of judicial cognizance, already provided for, wehther civil actions in the nature of debt for penalties under Sections 3 and 4, or indictments for misdemeanors under Sections 6, 8 and 10. Its intention was to vest concurrent jurisdiction of such cases in the circuit and district courts; and it is impossible to construe it as giving the courts jurisdiction to determine matters which the act has expressly committed to the final determination of executive officers."

In *Lem Moon Sing vs. United States,* 39 L. Ed. 1082, the court, at page 1085, states the rule as follows:

"The contention is that while, generally speaking, immigration officers have jurisdiction under the statute to exclude an alien who is not entitled under some statute or treaty to come into the United States; yet if the alien is entitled, of right, by some law or treaty, to enter this country, but is nevertheless excluded by such officers, the latter exceed their jurisdiction; and their illegal action, if it results in restraining the alien of his liberty, presents a judicial question for the decision of which the

courts may intervene upon a writ of habeas corpus.

That view, if sustained, would bring into the courts every case of an alien claiming the right to come into the United States under some law or treaty, but was prevented from doing so by the executive branch of the government. This would defeat the manifest purpose of Congress in committing to subordinate immigration officers and to the Secretary of the Treasury exclusive authority to determine whether a particular alien seeking admission into this country belongs to the *class* entitled by some law or treaty to come into the country, or to a *class* forbidden to enter the United States. Under that interpretation of the Act of 1894 the provision that the decision of the appropriate immigration or custom officers should be *final,* unless reversed on appeal to the Secretary of the Treasry, would be of no practical value."

Again in the case of *Chin Yow vs. United States,* 52 L. Ed. 369, Chief Justice Holmes uses the following language:

"If the petitioner was not denied a fair opportunity to produce the evidence that he desired, or a fair though summary hearing, the case can proceed no farther. Those facts are the foundation of the jurisdiction of the district court, if it has any jurisdiction at all. It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not. And, by way of caution, we may add that jurisdiction would

> not be established simply by proving that the commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced."

Again the court, at the top of page 2, states the rule correctly when he says that the jurisdiction of this court is limited to ascertaining whether the petitioners were denied a hearing:

> "This court held in *In re Moola Sing,* 207 Fed. 780, that the jurisdiction of this court is limited to ascertaining whether the petitioners were denied a hearing, and if a hearing has been accorded, the court is precluded from a reexamination of the issue presented merely because it is contended that the conclusion of the immigration officers based upon the testimony was wrong."

Though in the *Moola Singh* case the court confined itself to a consideration of whether a hearing had been denied in the instant case, it seems to have examined the evidence and decided the case on its merits.

REASON OF THE RULE.

Congress Has Exclusive Jurisdiction.

It seems to us that the Federal courts have many of them entirely mistaken the decisions of our

Supreme Court, and this error is due to overlooking the reason of the rule. The question as to what immigrants shall be admitted or excluded in this country is an international question, over which the courts have no jurisdiction whatsoever, but by the Constitution and all of the fundamental laws of our country, this is a matter exclusively for the consideration of Congress. If Congress errs in its dealings with foreign powers there is no redress to the courts of our country, but only redress to Congress alone. In short, the dealings of a country with a foreign country are a matter exclusively within the political rather than the judicial power. If you grant that Congress has the exclusive power, it follows as the night follows the day that they can deputize this power to any agent they may select to execute it; if this agent exceeds his power, it is a matter for Congress to settle and not for the courts. It is as absurd to contend that the courts can say to an immigration officer, "You have exceeded your authority in excluding an alien," as it is to maintain that they can say that an ambassador or a consul has exceeded his authority and that therefore an aggrieved foreigner or foreign nation can appeal to the American courts to redress the grievance. The

only reason that the courts have the right to intervene when an executive exceeds the authority given to him by law, is because he violates some right guaranteed to a citizen or foreigner by either the Constitution or laws of the United States; and when our country is dealing with a foreign country, neither the Constitution nor any law of the United States is operative, and the courts have no authority in the premises whatsoever.

If these Russians were in Russia asking for admission to the United States and they were excluded, they could not appeal to the American courts to reverse the erroneous ruling of the immigration authorities because, though the act says that the following classes of aliens shall be excluded from admission, it does not say that if an alien does not belong to the excluded classes he shall have the right to enter, nor does the treaty with Russia have any such provision. If these Russians have a right to enter our country, which can be enforced by the courts because they do not belong to the excluded classes specified in Section 2, all of the Russians, and all of the French, and all other foreign nations have the same right.

In the dealings of a country with a foreign country the action of one branch of the government should be final, and should not be subject to review by the other branch. In such cases the courts and the Immigration Board are equal in authority, one cannot override the actions of the other, and this should be so, because executive officers are much better qualified in handling such matters to take into consideration questions of international law and expediency. Immigration officers could and would consider questions of this character — courts would never.

The above reasoning is adopted by the Supreme Court of the United States, as will be found in the case of

Eikiu vs. United States, 35 L. Ed. 1146, at page 1149,

where it says:

> "It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. In the United States this power is vested in the national government, to which the Constitution has committed the

entire control of international relations, in peace as well as in war. It belongs to the political department of the government, and may be exercised either through treaties made by the President and Senate, or through statutes enacted by Congress, upon whom the Constitution has conferred power to regulate commerce with foreign nations, including the entrance of ships, the importation of goods and the bringing of persons into the ports of the United States; to establish a uniform rule of naturalization; to declare war, and to provide and maintain armies and navies; and to make all laws which may be necessary and proper for carrying into effect these powers and all other powers vested by the Constitution in the government of the United States or in any department or officer thereof.

The supervision of the admission of aliens into the United States may be intrusted by Congress either to the Department of State, having the general management of foreign relations, or to the Department of the Treasury, charged with the enforcement of the laws regulating foreign commerce; and Congress has often passed acts forbidding the immigration of particular classes of foreigners, and has committed the execution of these acts to the Secretary of the Treasury, to collectors of customs and to inspectors acting under their authority.

An alien immigrant, prevented from landing by any such officer claiming authority to do so under an act of Congress, and thereby restrained of his liberty, is doubtless entitled to a writ of habeas corpus to ascertain whether the restraint is lawful. And Congress may, if it sees fit, as in the statutes in question in *United States vs. Jung Ah Lung*, authorize the courts

to investigate and ascertain the facts on which the right to land depends. But, on the other hand, the final determination of those facts may be intrusted by Congress to executive officers; and in such a case, as in all others, in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to re-examine or controvert the sufficiency of the evidence on which he acted. It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. As to such persons the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."

This language is quoted with approval in the case of *Lem Moon Sing vs. United States* 39 L. Ed. 1082, at page 1084.

THE ACT ITSELF.

The Immigration Ast of February 20, 1907, Section 24, says:

"Immigration officers shall have power to

administer oaths and to take and consider evidence touching the right of any alien to enter the United States, and where such action may be necessary, to make a written record of such evidence."

Again, in Section 25, after stating how the board shall be made up, the act says:

"Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before boards shall be separate and apart from the public, but the said boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them."

Again, further down in the act, in the proviso clause, it says:

"That in every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of the appropriate immigration officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of Commerce and Labor."

It will be observed that by this act the immigration board is not required to have a hearing. It has authority to determine whether the alien shall

land or be deported, and then it prescribes how all hearings shall be conducted.

The act says the board shall keep a complete permanent record "of all such testimony as *may be* produced," but does not say that such testimony must be taken. The courts have gone further than the law, even in saying that there must be a hearing, and they have made their most grevious mistakes in endeavoring to apply court rules of procedure to hearings of the Board of Immigration.

If Congress has given the board "authority to determine whether an alien who has been duly held shall be allowed to land, or shall be deported," and has not dictated how this authority shall be exercised, it is very difficult to understand what right a court has to dictate the method of the exercise of the authority, to attempt to force upon the board methods of procedure peculiar to courts alone. If Congress has given the board such authority, the board must have the right to determine what are the facts, as well as the meaning of the Immigration Law itself.

APPLICATION OF RULE.

Meaning of Person Likely to Become Public Charge.

The question as to whether a person is likely to become a public charge is one involving many facts. It is impossible for the court under the act to say what matters are to be considered by the immigration authorities in determining this question, it may be the health of the immigrant, the mentality of the immigrant, or it may be the condition of the country. In passing on the question, such a broad range of reasons would enter into it that it is impossible for the court, under the act, to prescribe its limits. Congress left all these matters to the immigration authorities, because it assumed that such authorities would be more familiar than courts with local conditions and with the kinds of men who would be likely to become public charges.

A man might be likely to become a public charge at one time, who would not be at another. It is as logical to say that a man is likely to become a public charge because he has "insufficient money to maintain him during the winter," and because there are thousands of men of the same occupation as his

unemployed and because there is no work for him in the United States, as it is to say that he is likely to become a public charge because of some mental or physical defect which incapacitates him from coping with the conditions in our country; and the Immigration Board would be acting within its authority as much in one case as it would be in the other. Even if a jury had to determine this fact the court could not set aside the verdict because it took into consideration such matters. All the authorities say that the decision of the Immigration Board as to a question of fact is final, and the question whether or not a person is likely to become a public charge is a question of fact, and not one of mixed law and fact.

How the Rule Was Applied in Other Cases.

It might throw some light on the subject to see how the rule has been applied by Federal Courts in other cases. Though some of them state the rule that there must be some testimony taken before the Immigration Board, yet they require very slight testimony to satisfy the rule.

In the case of *United States vs. Rodgers,* 191 Fed. 970, it was held that where an alien immigrant was before the Board of Inspectors, so that they had

an opportunity to inspect and examine him in person, and he was given a fair hearing and full opportunity to present evidence, an order denying him admission on the ground that he is likely to become a public charge cannot be reviewed by the courts in habeas corpus proceedings as not supported by evidence.

See also *United States vs. Williams,* 190 Fed. 897. The court in the *Rodgers* case, page 973, quotes with approval the following language used in the *Williams* case:

> "Ever since the decision of the Supreme Court in *Nishimura Eikiu vs. United States,* 142 U. S. 651 (12 Sup. Ct. 336; 35 L. Ed. 1146), it has, so far as I know, been held in this circuit that if the Board of Inspectors had the alien before them so that they might themselves inspect and examine him, there was sufficient before them to warrant his exclusion on the ground that he was liable to become a public charge, if, in their discretion, they reached such a conclusion. Nothing which has been presented on this argument persuades me to reverse this holding."

In an earlier case, namely *United States vs. Williams,* 186 Fed. 354, 356, the court followed the same rule. Thus it says:

"But the immigration acts confer exclu-

> sive power upon the immigration officials to determine such questions, and the courts, so long as the procedure prescribed by the immigration acts and the rules established for their administration is substantially followed, have under the decisions of the United States Supreme Court no jurisdiction to interfere."

This latter was a very hard case, but the court had to leave it to the immigration authorities.

So if there must be a hearing, and all that is necessary to satisfy the rule is that the immigrant appear in person before the board, we have gone much further in fulfilling the requirements of the law than in most of the cases that have been considered by the courts.

It seems to us that the court, instead of merely determining whether the Immigration Board has exceeded its authority, has gone to the extent of reviewing its decision just as if it were one of a lower court.

Respectfully submitted,

CLAY ALLEN,
United States Attorney.

G. P. FISHBURNE,
Assistant United States Attorney.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

HENRY M. WHITE, Commissioner of Immigration at Seattle, Washington, for the United States (Respondent), *Appellant*,

vs.

K. GREGORY, *et al* (Petitioners), *Appellees.*

No. 2378.

In the matter of the application of K. Gregory, M. Aloshin, I. Riaboff, P. Neanlin, I. Emelin, L. Orloff, G. Yakimoff and P. Yakimoff for Writ of Habeas Corpus.

Appeal from the United States District Court for the Western District of Washington. Northern Division.

Brief of Appellees.

STATEMENT OF THE CASE.

The appellees filed in the District Court a petition for a writ of habeas corpus, alleging in substance as follows, to-wit:

1st. That they were detained at the United States Detention Station in the City of Seattle, by the United States Commissioner of Immigration, contrary to the statutes in such cases made and provided.

2nd. That they are white persons above the age of twenty-one years, in the enjoyment of good health, able bodied, and able to take care of themselves and duly supplied with money to meet all the requirements of the law of the United States, and that they are not contract laborers, and are not seeking entrance into the United States in pursuance of any contract for labor made with anyone.

3rd. That they are seeking to enter the United States of their free will and in good faith, intending to make the United States their permanent residence and fully intending to obey and comply with all the laws of the United States.

4th. That all of your petitioners were born in

Russia and that they have left Russia of their own free wills, and not by reason of having committed any offense against the laws of Russia, and that they are coming to this country hoping to better their condition under the beneficient laws of the United States.

5th. That they have paid their transportation to the United States with their own money.

6th. That your petitioners are not held by said Immigration Commissioner upon any final process issued by any court having jurisdiction, or held upon any process or order for contempt, of any court officer or body having authority to commit or hold them, nor upon any warrant issued by any court of this state, upon indictment or information, in this state, nor is there any lawful or valid reason for this detention.

7th. That your petitioners are held upon the alleged grounds as follow, to-wit:

1st. That there many Russians in the City of Seattle out of work.

2nd. That they might become a public burden; but your petitioners aver that they are able to secure

and save harmless the United States from any damage of any kind or nature whatsoever arising from the inability of your petitioners to support and take care of themselves, and that they are amply willing and able and intend to be good and self-supporting residents of the United States.

Wherefore petitioners pray for a writ of habeas corpus and for their discharge and general relief. Rec. pp. 3, 4 and 5.

The respondent, for a further and separate answer and affirmative defense sets up in substance the following:

That the Board decided to reject the aliens on the ground that they were persons who were likely to become a public charge, for the following reasons:

1st. Because they are common farm laborers, and there is not work for them in the United States.

2nd. Because they have but a limited amount of money, insufficient to maintain them during the winter.

3rd. Because there are 800 to 1,000 Russians unemployed in Seattle, and thousands of other nationalities in the same condition, and reports from the interior are to the effect that the supply of com-

mon labor is far in excess of demand.

4th. That any addition to the unemployed should be guarded against, and alien laborers should not be permitted to enter the United States at this time.

For a fuller statement of the reasons for the exclusion of these aliens and their subsequent detention on this account until they return to their native country, we refer to the findings of the Board of Special Inquiry, set forth in full on the last pages of Exhibit "A" referred to above. Rec., pp. 12 and 14.

These are substantially the only grounds disclosed by this record upon which these aliens are detained, and constitute the only defense to the petition of appellees.

NO ACTUAL APPEAL WAS TAKEN.

It does not appear from the record that a transcript of the proceedings was ever before the United States Department of Commerce and Labor for examination and review. The alleged appeal consists of an exchange of telegrams, which amount to nothing, and with which the petitioners has nothing to do, and of course their rights under the law were

not thereby affected. Rec., p. 14.

MOTION TO DISCHARGE PETITIONERS.

Upon the coming in of the return of the respondent the petitioners move as follows, to-wit:

Come now the said petitioners and move that they and each of them be discharged forthwith on the following grounds, to-wit:

1st. The return of the Immigration Commissioners shows that the said petitioners are detained and restrained of their liberty for unlawful reasons, and contrary to the statutes in such case made and provided.

2nd. That the special examining board, and the said commissioner, and the said secretary of commerce and labor, exceeded their authority and their jurisdiction, and their alleged proceedings and decision are null and void.

3rd. That the alleged reasons for detaining said petitioners are irrelevant, immaterial, and not supported by evidence, and are frivolous and sham.

4th. That said petitioners have all the personal qualifications required by the statutes to entitle them to immediate and unconditional discharge.

Upon the hearing this motion was granted. As its decision is very concise, we set it out in full. It is in words and figures as follows:

K. Gregory and seven others filed a petition praying a writ of habeas corpus, alleging that they are in good faith seeking admission into the United States, to make the United States their permanent home; that they do not come within any of the classes prohibited admission. A show cause order was issued and the Commissioner of Immigration made return, setting forth, in substance, that the petitioners sought admission and were held for special inquiry by the immigrant inspector and a board of special inquiry was organized as provided by law, and:

"That on December 23, 1913, after a full hearing (a duplicate report of which appears in the immigration files of this cause and is marked 'Exhibit A' and made a part of this return), the Board decided to reject the aliens on the ground that they were persons who were likely to become a public charge, for the following reasons:

1st. Because they are common or farm laborers, and there is no work for them in the United States.

2nd. Because they have but a limited amount of money, insufficient to maintain them during the winter.

3rd. Because there are 800 to 1,000 Russians unemployed in Seattle, and thousands of other nationalities in the same condition, and reports from the interior are to the effect that the supply of common labor is far in excess of demand.

4th. That any addition to the unemployed should be guarded against, and alien laborers should not be permitted to enter the United States at this time."

That the petitioners appealed to the secretary of Labor, who affirmed the decision of the board of special inquiry.

The petitioners move that they be forthwith discharged for the reasons:

"(1) That the return shows that they are detained and restrained of their liberty for unlawful reasons and contrary to the statutes in such cases made and provided; (2) that the special examining board and the secretary of commerce and labor and said commissioner exceeded their authority and jurisdiction; (3) that the alleged reasons for detaining said petitioners are irrelevant, immaterial and not supported by evidence, and are frivolous and sham; (4) that said petitioners had all the personal qualifications required of them by the statutes, and to entitle them to immediate and unconditional discharge."

This court held *In re Moola Singh*, 207 Fed. 780, that the jurisdiction of this court is limited to ascertaining whether the petitioners were denied a

hearing, and if a hearing has been accorded, the court is precluded from a re-examination of the issue presented merely because it is contended that the conclusion of the immigration officers based upon the testimony was wrong. In the *Moola Singh* case a trial was had, and the conclusion of the examining board was that the aliens be excluded from admission under the laws of the United States. The conclusion of the board found no delinquency in the personal qualifications of the applicants which brought them within the exclusion provisions of the act. This court cannot examine into the testimony produced upon the hearing in this case before the special examining board, nor enter upon a re-examination of the facts. This court is bound by the facts as found by the board of special inquiry. Do the facts as found bring the petitioners within the provisions of the exclusion provisions of the act? Are the petitioners qualified to enter, under the findings of the board, and is the act of the board beyond its jurisdiction, and does the personal condition of the applicants, as found, preclude their exclusion?

Section 1 of the Immigration Act, of February 20, 1907, reads:

"That there shall be levied, collected and paid a tax of four dollars for every alien entering the United States."

Section 2 of the Act provides who are to be excluded, among whom are "persons likely to become a public charge." Section 10 of the Act provides:

"That the decision of the board of special inquiry, hereinafter provided for, based upon the certificate of the examining medical officer, shall be final as to the rejection of aliens affected with tuberculosis or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under Section 2 of this Act."

Section 24 of the Act provides:

"* * * Immigration officers shall have power to administer oaths, and to take and consider evidence touching the right of any alien to enter the United States, and where such action is necessary, to make a written record of such evidence.

A provision for the punishment of any person who shall knowingly or wilfully give false oaths or swear to any false statement is made, and it is also provided that the decision of such officer in admitting an alien shall be subject to challenge by any other officer, and such challenge shall operate to take the alien whose right to land is challenged before a

board of special inquiry for its investigation. It is further provided:

"Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry."

"Sec. 25. * * * All hearings before boards shall be separate and apart from the public * * * and the decision of any two of the board shall prevail; but either the alien or any dissenting member of said board may appeal * * * to the secretary of labor * * * that in *every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the secretary of labor.*"

Under Section 2, an alien "likely to become a public charge" is excluded; and under Sec. 25, the decision of the board of special inquiry is final where the alien is by law excluded. The findings and conclusions of the board with relation to the petitioners, however, eliminate all physical and mental deficiencies legislated against. Shall it be said, under such a record, that the examining board can exclude an alien upon the conclusion that he is "likely to become a public charge," when, upon the facts found

and reasons given, the applicant is not brought within the provisions of the act excluding him from admission?

In the findings made there is no disqualification personal to the applicants, nor any objection made because of inability to conform to new conditions and relations. They are not excluded by the provisions of the act. The reasons given do not exclude them under the act. These reasons are proper subjects for the consideration of Congress, but they do not authorize the temporary suspension of the Immigration Act, which the adoption of these findings will do. The laws and principles upon which our government rests forbid the exercise of arbitrary power. Immigration officers must act within the powers given. Courts have power to intervene where they exceed their authority.

Ex parte Saraceno, 182 Fed. 955;
Lewis vs. Frick, 189 Fed. 146;
In re Feinkoff, 47 Fed. 447;
Ex parte Koerna, 176 Fed. 479;
In re O'Sullivan, 31 Fed. 447;
United States vs. Martin, 192 U. S. 1.

The petitioners are discharged; but, if within ten days after the filing of this decision, the respondent appeals, the petitioners must give recognizance with sufficient surety in the sum of $250 each, conditioned to appear and answer the judgment of the appellate court in accordance with Supreme Court Rule 34.

ASSIGNMENTS OF ERROR.

Respondent's assignments of error are exceedingly numerous. Rec., pp. 53, 54, 55, 56 and 57.

They may be condensed and considered together. They are in substance as follows, to-wit:

The court erred in taking jurisdiction and reviewing the acts of statutory officials.

The learned counsel for appellants assume as the ground of their contention that such officials are above and beyond the reach of the law, and that when they exceed their authority, and their acts become lawless, wrongful and arbitrary, the courts have no jurisdiction to interfere and review their conduct. This is claiming for such officials supreme and despotic power, which does not exist in the United States, and cannot be lawfully exercised at

all. Congress has only restricted power, and the same is true of all the agents of the government. In all cases where the constitution and the laws of the land are violated the courts have jurisdiction, and any act of Congress (if there should be any such) depriving the courts of such jurisdiction would be unconstitutional and void.

A STATUTORY QUESTION ONLY.

Congress has enacted certain statutes, prescribing certain conditions upon which immigrants may enter this country. In this case no treaty is involved, but only the statute, and we are to look to the statute in determining the rights of these aliens. If they have all of the qualifications prescribed by law and none of the impediments which would place them in any of the excluded classes they should be permitted to enter this country unconditionally, and without delay, and without imposing on them any unusual and unnecessary hardship.

Rule 6, Department of Commerce and Labor, relating to the admission or exclusion of Immigrants.

Fong Yue Ting vs. U. S., 147 U. S. 698.

It is an undisputed fact, as shown by this record, that the appellees have all personal qualifications required by law to entitle them to unconditional admission to this country, and none of the defects that would exclude them. This was so held by the court (Rec., p. 49), and the decision of the board of inquiry was not based on any lawful grounds (Rec., p. 13), and an examination of the testimony shows that there is no lawful grounds for excluding them (Rec., pp. 18 to 41), but, on the contrary, this record establishes their right to unconditional entry, and if they can be excluded all immigrants may be excluded and the immigration laws nullified and suspended by the arbitrary action of the immigration officers, and Congress ousted of its jurisdiction to legislate in respect to immigration.

THE STATUTE.

The Immigration Act of February 20, 1907, is in part as follows:

"Sec. 10. That the decision of the board of special inquiry herein provided for, *based upon the certificate of the examining medical officer, shall be final as to the rejection of aliens afflicted with tuberculosis, or with a loathsome or dangerous contagious disease, or with any mental or physical disability*

which would bring such aliens within any of the classes excluded from admission to the United States under this Act."

This statute does not apply to the appellees, because they are not within the excluded classes.

EXPERT KNOWLEDGE.

The reason the certificate of the medical examiner is made conclusive as to the infirmities that would bring the aliens within the excluded class is obvious. *The certificate is based upon expert knowledge.* It is not conclusive as to anything else. The conclusiveness of the medical certificate makes the decision of the board of inquiry conclusive as to disabilities only *when based upon the certificate.* But when it is not based upon the medical certificate it is not conclusive as to anything.

The language of the statute is so plain that it is surprising that its true meaning should be mistaken by learned counsel.

AUTHORITY OF BOARD OF INQUIRY.

Whatever authority the commissioner or the examining board has is conferred by the statute, and is confined within the statute. When they go out-

side of the letter of the law they are outside of their authority and in the realm of the lawless, and all their acts are wrongful and arbitrary and necessarily within the jurisdiction of the courts. Otherwise there would be wrongs without remedy, contrary to the law of the land.

It is the first duty of the courts to enforce the constitution and the supreme law of the land, and of course an official is not exempt. If he exceeds his authority his acts have no validity, and he is answerable as an individual. This is what the immigration officers have done in the case at bar. They are seeking to exclude the appellees upon grounds not prescribed by the statute, over which they have no jurisdiction, and which does not concern them in their official capacity.

If not excluded by the statute they cannot be excluded at all.

In re Kormehl, 87 Fed. 314.

Ekill vs. U. S., 142 U. S. 651.

2 *Cyc.*, 120 and 121.

In re Monoco, 86 Fed. 117.

In re Gottfried, 89 Fed. 9.

Rules 9 *and* 20, *Laws and Regulations Relating to Immigrants.*

21 *Cyc.*, 292-3-6.

U. S. vs. Jung Ah Lung, 124 U. S. 621.

McClaughry vs. Deming, 186 U. S. 49.

The reasons specified for the exclusion of the appellants are not specified in the statute nor based upon expert knowledge. They are so absurd and unreasonable that we again call the attention of this honorable court to them. They as follows, to-wit:

"First. Because they are common farm laborers and there is no work in the United States for them.

Second: Because they have a limited amount of money, insufficient to maintain them through the winter.

Third. Because there are 800 to 1,000 Russians unemployed in Seattle, and thousands of other nationalities in the same condition, and reports from the interior are to the effect that the supply of common labor is far in excess of demand.

Fourth: That any addition to the unemployed should be guarded against, and alien laborers should not be permitted to enter the United States at this time." Rec., p. 13.

None of these alleged reasons are within the statutes. None of them are relevant or material.

None of them are based upon the evidence within the record. None of them are proper subjects of inquiry by the board of immigration. They are all unwarranted assumptions, frivolous and sham, and so far as this record is concerned they are untrue. Nothing can be conceived of that is more absurd and foolish. As well say that they should be excluded because there is war in Mexico, or because of any other irrelevant matter.

The first cause, "that they are farm laborers and that there is no work for them in the United States," is at variance with what everybody knows and what is a matter of common knowledge, of which this honorable court will take judicial notice to-wit, "that there is a scarcity of farm laborers in the United States." But the fourth cause is most unique, to-wit: "That alien laborers should not be permitted to enter the United States at this time," and thereupon and in pursuance thereof the immigration officers suspend the law of Congress.

The other alleged grounds for excluding the appellees speak for themselves and further comment is unnecessary.

It is obvious that the intent of the statute is to

make the findings of the Board of Inquiry, based upon the facts contained in the medical examination certificate, final as to the facts only,but not as to the law flowing from such facts. The law is a judicial question, always, and is the logical sequence from the facts, just as the verdict of a jury must control the judgment of the court. So the facts must govern the right of appellees. The vital issues in the case at bar—whether the appellees have all the personal qualifications, which would entitle them to unconditional entry into this country, and none of the disabilities which would bring them into any of the excluded classes. Such being the case, the law is with them. I quote from the opinion of the court below:

"In the findings made there is no disqualification personal to the applicants, nor any objections made because of inability to conform to new conditions and relations. They are not excluded by the provisions of the act." Rec., pp. 49 and 50.

This finding of the court is supported by the record and is conclusive and controls the judgment like the verdict of a jury. This finding of the court is not assailed in any way, nor assigned as error. See assignments of error, Rec., pp. 54, 55 and 56.

ARBITRARY POWER.

It is elementary that officials under the law must keep within the law. They have no power whatsoever not granted by the law, and when they exceed their authority their acts become arbitrary and lawless. Any Act of Congress conveying arbitrary power upon the Board of Inquiry, or upon any body would be unconstitutional and void. Arbitrary power cannot be lawfully exercised within the United States.

Justice Matthews, late of the Supreme Court of the United States, said:

"Any act of the legislature conferring arbitrary power is void."

"The laws and principles upon which our government rests forbid the exercise of arbitrary power."

"Acts conferring arbitrary power do not belong to the domain of law, and are always inoperative and void."

Yick Wo vs. Hopkins, 118 U. S. 356.

If there are no lawful grounds for excluding these appellees, the examining board has no power to exclude them at all. The officials are bound by the statute, and cannot nullify or suspend the statutes.

If such things are permitted our government ceases to be a government of law, and becomes a government of men.

RETURN OF RESPONDENTS.

We again call the attention of this Honorable Court to the return. It speaks for itself. It is quite peculiar. It is maladministration *per se.* There is no claim that its officials have acted according to the statute in such cases made and provided. It contains among other things the averment that "*alien laborers should not be permitted to enter the United States at the present time,*" and upon this novel and unwarranted proposition they base their official decision.

From this it follows as a logical sequence that if these appellees can be excluded, all immigrants may be excluded, at the arbitrary whim and caprice of the immigration officers, regardless of the law.

OFFICERS MUST ACT WITHIN THE LAW.

The case at bar is analogous to the case of a sheriff or a marshal, or any other representative of the law. None of them can do anything outside of their authority. An execution against A. would not

warrant the robbery of B., and a court might have jurisdiction to render a judgment against C. but not against other people, who are not liable in the same manner as C., and in like manner the Board of Inquiry could have jurisdiction to exclude those within the excluded classes, but could have no jurisdiction to exclude those who were not within the excluded classes and who have a right to entry into the United States. The facts in all cases determine the jurisdiction and the judgment. There must be

NO VARIANCE BETWEEN THE EVIDENCE AND THE JUDGMENT.

In the case at bar the evidence shows affirmatively that the appellees are not within the excluded classes, and that they have a right to unconditional entry into the United States, The Act does not apply to them, and any judgment adverse to them would be at variance with the evidence, and the Act excluding certain immigrants does not apply to them, unless the Act excludes all immigrants.

SPECIAL TRIBUNAL MAY BE REVIEWED.

1. When order of deportation is not confined to the excluded classes, and when the evidence does

not sustain the findings of the Board.

2. When there are errors of law.

3. When the order is contrary to the evidence.

4. When the person sought to be deported is not within the inhibition of the statute.

5. When the special tribunal has exceeded its authority; and

6. When the deportation is sought upon grounds not prescribed by the statute.

Ex Parte Saraceno, 182 Fed. 955.
Lewis vs. Frick, 189 Fed. 146.
In re Feinkoff, 47 Fed. 447.
Ex Parte Koerner, 176 Fed. 478.
In re O'Sullivan, 31 Fed. 447.

All cited by the court, *supra*, and all in point as above indicated.

The learned counsel for appellant contends that the admission of immigrants is an international question, with which courts have nothing to do, but the answer is, Congress has legislated, with respect to immigrants, and has prescribed terms and conditions upon which aliens may be admitted, and when an alien makes application for admission he does so

under the statute, and thereby becomes, by operation of law, entitled to all the rights conferred by the statute, and the courts have taken and do take jurisdiction as a matter of course to enforce the rights of the applicants under the statute.

An examination of the authorities cited by appellants, counsel will show that so far as they are in point, they sustain the contention of the appellees. They all forbid anarchy, lawlessness and uncontrolled action of statutory officials and the deportation of any alien except in pursuance of law. They all discriminate between the arbitrary and vicious acts of statutory officials and the just and humane processes of the law based upon natural justice and the practice of the courts.

ALWAYS IN OPERATION.

The constitution and laws of the land are always in operation. They cannot be suspended. Neither the government, nor Congress, nor the courts, nor any agency of the government can suspend the laws of the land for an instant. The law is always in operation for the protection of all persons within the jurisdiction of the United States, includ-

ing aliens who have applied for admission, and not excluded by law. It is the imperative duty of this court to enforce the law and protect the rights of everybody, including aliens who are applicants for admission. The rights of such aliens are just as sacred as the rights of others, and their exclusion, except as provided by law, would be a great and irreparable wrong.

Respectfully submitted,

JOHN R. PARKER,
JACOB KALINA,
Attorneys for Appellees.